

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

RELX Inc.,

Plaintiff,

vs.

INFORMATICA LLC

Defendant.

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No. 16-cv-9718 (AKH)

**STATEMENT  
OF UNCONTROVERTED  
MATERIAL FACTS**

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INFORMATICA LLC,

Counter-Plaintiff,

vs.

RELX Inc.,

RELX Group plc

Counter-Defendants.

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Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56.1, Plaintiff/Counter-Defendant RELX Inc. and Counter-Defendant RELX Group plc (collectively “LexisNexis”) respectfully submit this Statement of Uncontroverted Material Facts in support of LexisNexis’ Motion for Partial Summary Judgment.

<b>Uncontroverted Fact</b>	<b>Supporting Evidence</b>
1. In May 2010, Reed Elsevier Group, PLC entered into a new Master Software License Agreement with Informatica (the “License Agreement”).	Declaration of Jeff R. Reihl (“Reihl Decl.”) attached hereto as Exhibit 1. Reihl Decl. ¶ 3, Exhibit 2.

<p>2. The License Agreement provided that the products would be licensed to LexisNexis, a division of Reed Elsevier Inc.</p>	<p>Reihl Decl. ¶ 4, Exhibit 2 § 2.1.1</p>
<p>3. Section 2.5 of the License Agreement indicates that the License Agreement is non- exclusive.</p>	<p>Reihl Decl. ¶ 5, Exhibit 2 § 2.5</p>
<p>4. Section 2.1 of the License Agreement grants to LexisNexis a license to Informatica Software to:</p> <ul style="list-style-type: none"> <li>a. Use the Informatica Products internally solely for internal development and testing for the purpose of using or integrating the Informatica Products into the Customer Application;</li> <li>b. Use the Informatica Products internally solely for the purposes of supporting End Users;</li> <li>c. Use the Informatica Products solely with the Customer Application, as defined more specifically in Exhibit 1 to this Agreement which is attached hereto and incorporated by reference into the Agreement, and solely in conjunction with the implementation, provisioning, and ongoing operation of the Customer Application to End Users on a</li> </ul>	<p>Reihl Decl. ¶ 6, Exhibit 2 § 2.1</p>

hosted basis.	
5. Section 4.3 of the License Agreement allowed Informatica to examine LexisNexis' books and records to verify compliance with the License Agreement, if Informatica had a reasonable basis to proceed. LexisNexis agreed to remit a "shortfall in payment" disclosed by Informatica's examination.	Reihl Decl. ¶ 7, Exhibit 2 § 4.3
6. When the parties entered into the License Agreement in May 2010, they agreed that the list price of the Informatica software would be fixed for a term of three years ("Discount Period").	Reihl Decl. ¶ 8, Exhibit 2 pp. 12-13
7. Exhibit C to the License Agreement set the list price for the B2B Data Exchange product at \$50,000 during the Discount Period.	Reihl Decl. ¶ 9, Exhibit 2 pp. 12-13
8. Exhibit C contained a calculation of the discount: "upon completion of the initial two (2) transactions, all subsequent orders will be discounted by 35% immediately, regardless of deal size) until the next threshold is reached." The maintenance price was set at 18% of the price paid for each license during the Discount Period.	Reihl Decl. ¶ 10, Exhibit 2 pp. 10-11
9. After LexisNexis purchased \$4.2 million worth of Informatica software, calculated using the	Reihl Decl. ¶ 11, Exhibit 2 pp. 12-13

contractual list price, the discount would increase to 40%. After \$6 million in purchases, the discount would increase to 45%. After \$7.7 million in cumulative purchases, the discount would increase to 50%.	
10. When LexisNexis made its \$5.8 million purchase in 2012 (the “2012 License Amendment”), the cumulative spend was more than the \$7.7 million threshold and Informatica applied the proper 50% to the purchase.	Reihl Decl. ¶ 12, Exhibit 3
11. After the purchase in 2012, LexisNexis was entitled to a 55% discount.	Reihl Decl. ¶ 13, Exhibit 2 pp. 12-13
12. The 2012 Amendment also extended the Discount Period to May 2014, well after the Installation Date on which the alleged over-deployment occurred.	Reihl Decl. ¶ 14, Exhibit 3
13. Exhibit F to the License Agreement indicates that “notwithstanding anything to the contrary, the language in this [License] Agreement and Exhibits A, B, C and C-1 shall supersede and control in the event of any inconsistency between the Exhibit F and such documents.”	Reihl Decl. ¶ 15, Exhibit 2 p. 19
14. Mishra was identified as the expert Informatica resource in several Statements of Work.	Reihl Decl. ¶ 16, Exhibits 4-5

15. The Statements of Work are governed by the Agreement for Services (“Services Agreement”) between LexisNexis and Informatica.	Reihl Decl. ¶ 17, Exhibits 4-6
16. In the Services Agreement, Informatica agreed to be “solely responsible and liable for the actions of its employees and any Service Provider personnel performing work pursuant to this Agreement for the supervision, daily direction, and control . . .”	Reihl Decl. ¶ 18, Exhibit 6 at § 24
17. In March 2013 (the “Installation Date”), Mishra installed Informatica software that was identified as deficient in Informatica’s audit report (“the Software”) on computers totaling 18 sockets and 104 cores. (SF at ¶ 12).	Reihl Decl. ¶ 19, Exhibit 7
18. Pursuant to the December 2012 Statement of Work between the parties, LexisNexis hired Informatica to install the Software.	Reihl Decl. ¶ 20, Exhibit 8
19. Nalin Mishra installed all the Software in LexisNexis’ production environment.	Deposition of Nalin Mishra Dep. pp. 23-24
20. Mishra provided guidance and recommendations for the design of the Software and answered questions about its installation.	Misha Dep. pp. 68, 70 Deposition of Randy Mickey pp. 93-97
21. As of the Installation Date, the contractual list price of the B2B Data Exchange software was \$50,000	Reihl Decl. ¶ 21, Exhibit 2 pp. 12-13

per CPU core, and the net price was \$22,500 per CPU core.	
22. Mishra worked at Informatica for a total of two months prior to the LexisNexis assignment, which lasted more than three years.	Mishra Dep. p. 10
23. LexisNexis believed it was paying for expert advice and guidance, as required by the Services Agreement.	Reihl Decl. ¶ 22
24. LexisNexis immediately removed two servers containing 48 cores from the Informatica Grid as soon as it learned in May 2016 that Mishra's calculation that 40 of the CPU licenses were being used was mistaken.	Reihl Decl. ¶ 22
25. Informatica and LexisNexis are not competitors.	Reihl Decl. ¶ 23
26. LexisNexis did not sell Informatica Software to end users or third parties.	Reihl Decl. ¶ 24
27. Lexis Advance ® and Lexis.com, two of LexisNexis' customer-facing solutions received documents indirectly from both the ICCE platform and from other document processing platforms at LexisNexis after the documents were sent from the document processing platforms to a central repository.	Reihl Decl. ¶ 25

28. LexisNexis used the Informatica Software in the ICCE platform to format documents but did not use the Informatica Software in its Lexis Advance ® or Lexis.com solutions to provide content to customers. The ICCE platform processed fewer than 15 percent of the total documents available to customers online via Lexis Advance ® or Lexis.com.	Reihl Decl. ¶ 26
29. Informatica finally objected to the use of the Software on servers containing a total of 104 cores when it issued its audit findings in October of 2016.	Reihl Decl. ¶ 27, Exhibit 7
30. Informatica issued license keys for Informatica's resources to install the Software identified in the Agreement and provided upgrade scripts to later versions of the Software.	Reihl Decl. ¶ 28
31. Informatica purported to terminate the licenses to the Software in May 2017.	Reihl Decl. ¶ 29, Exhibit 9

**DATED:** July 30, 2018

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